

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

MISC. APPLICATION NO. 388 OF 2019
IN
CIVIL APPEAL NO. 3758 OF 2011

MRF LTD.

Appellant(s)/
Applicant (s)

VERSUS

STATE OF KERALA

Respondent(s)

O R D E R

This application is filed by the appellant/applicant for issuing appropriate directions in reference to the amount deposited by the applicant in terms of order dated 27.01.2009. The said order reads thus:

"Issue notice on the Special Leave petitions as well as on prayer for interim relief. Dasti granted.

In the meantime, tax payable by the petitioner-assessee during the pendency of these Special Leave Petitions will be treated as deposit and not payment, subject to the result of the Special Leave Petitions."

While finally disposing of the appeal, the Court reiterated the position that the amount deposited by the applicant shall remain with the Department as deposit till the matter is finally decided by the High Court and liberty was granted to the parties to apply to this Court for appropriate orders, if there be any reason for the same. The relevant part of the judgment of this

Court dated 28.04.2011 reads thus:

"11. So far as the amount of Rs. 13,19,11,404/- (Rupees thirteen crores nineteen lakhs eleven thousand

four hundred and four (colly), which was deposited by MRF in terms of order of this Court dated 27.1.2009 in SLP (C) No. 909 of 2009 is concerned, the said amount shall continue to remain with the Department as deposit till the matter is finally decided by the High Court. The liberty is also granted to the parties to apply to this Court for appropriate orders, if there be any occasion for the same but only after October 31, 2011."

It is not in dispute that the remanded proceedings have now attained finality and decided in favour of the applicant. As a result of which, the amount deposited by the applicant was required to be returned to the applicant. The Department has provided refund of the principal amount alongwith interest from 10.08.2017 @ 10% in terms of Section 44 (4) of the Kerala General Sales Tax Act, 1963 (for short KGSTA).

According to the applicant, however, the applicant ought to be paid interest @ 9% from the date of deposit of the amount until the same is refunded by the Department

On bare reading of the order dated 27.01.2009, in our opinion, the applicant was directed to pay the amount equivalent to tax payable but that was to be treated as "deposit" with the Department and not payment (of tax dues). The expression used 'will be treated as deposit not payment'; is quite significant. That position is restated in the final order passed by this Court on 28.04.2011.

The stand of the Department that the refund process ought to be governed by the provisions of the KGSTA, in our opinion, is inapposite. The amount deposited by the applicant was not towards tax dues as such, but to be treated as "deposit" in terms of order of the Court. That deposit would continue to remain with the

Department until the final decision of the High Court and to abide by such orders as may be passed by this Court regarding its refund alongwith interest or otherwise, in terms of the final judgment of this Court dated 28.04.2011.

Therefore, we are inclined to allow this application in terms of prayer Clause (c). The necessary adjustments of Rs. 9,96,38,016/- (Rupees Nine Crore Ninety Six Lakh Thirty Eight Thousand Sixteen only), being the net interest remaining due and payable, be given against future liabilities of the applicant to pay tax under the Kerala Value Added Tax Act, 2003.

Application allowed in the above terms.

.....J
(A.M. KHANWILKAR)

.....J
(AJAY RASTOGI)

New Delhi
April 24, 2019

ITEM NO.13

COURT NO.9

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

M.A. 388/2019 in C.A. No(s). 3758/2011

(Arising out of impugned final judgment and order dated 28-04-2011
in C.A. No. No. 3758/2011 passed by the Supreme Court Of India)

MRF LTD.

Petitioner(s)

VERSUS

THE STATE OF KERALA

Respondent(s)

(FOR ADMISSION and IA No.27022/2019-APPROPRIATE ORDERS/DIRECTIONS)

Date : 24-04-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s)

Mr. F.S. Nariman, Sr. Adv.
Mr. Gopinath Menon, Sr. Adv.
Mr. Subhash Sharma, Adv.
Mr. s. Sukumaran, Adv.
Mr. Anand Sukumar, Adv.
Mr. Bhupesh Kumar Pathak, Adv.
Ms. Meera Mathur, AOR

For Respondent(s)

Mr. Jaideep Gupta, Sr. Adv.
Mr. G. Prakash, AOR
Mr. Jishnu M.L., Adv.
Mrs. Priyanka Prakash, Adv.
Mrs. Been Prakash, Adv.

Mr. Maruf Khan, Adv.
Mr. Kamran Malik, Adv.
Mr. Praveen Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Misc. Application is allowed in terms of the signed order.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]

